(30,371)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 412

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., APPELLANT,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN OF THE UNITED STATES OF AMERICA, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES OF AMERICA

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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Court of Appeals of the District of Columbia.

No. 4164

COMPAGNIE INTERNATIONALE D. PRODUITS ALIMENTAIRES S. A., Appellant,

vs.

THOMAS W. MILLER, &c., et al.

a Supreme Court of the District of Columbia.

In Equity.

No. 42058.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., Complainant,

against

THOMAS W. MILLER, as Alien Property Custodian of the United States of America, and Frank White, as Treasurer of the United States of America, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Bill.*

Filed December 27, 1923.

In the Supreme Court of the District of Columbia, Holding an Equity Term.

In Equity.

No. 42058.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., Complainant,

against

THOMAS W. MILLER, as Alien Property Custodian of the United States of America, and Frank White, as Treasurer of the United States of America, Defendants.

To the Supreme Court of the District of Columbia:

The Complainant respectfully represents that:

First. It is a corporation organized on September 16, 1913 and existing under and by virtue of the laws of the Confederation of Switzerland, and has its principal office and place of business in Schaffhausen, in the Canton of Schaffhausen, Switzerland, and has no office, place of business or agent within the United States of America.

Second. The defendant Thomas W. Miller is a resident of the District of Columbia, and is now and since about March, 1921 has been the duly appointed, qualified and acting Alien Property Custodian of the United States, and is sued herein as the incumbent of said office; the said defendant is the successors in said office of Francis P. Garvan who in turn was the successor in said office of A. Mitchell Palmer, the first incumbent, and said defendant as such officer is possessed of the rights, property and interest owned or held
2 by and is subject to the obligations, duties and liabilities imposed upon his predecessor in said office.

Third: The defendant Frank White is a resident of the District of Columbia, and is now and since about April, 1921 has been the duly appointed, qualified and acting Treasurer of the United States, and is sued herein as the incumbent of said office.

Fourth. This is a suit of a civil nature, brought under the laws of the United States of America and in conformity with the general jurisdiction and powers of this court. The jurisdiction of this court is invoked under Section 24 of the Federal Judicial Code; also under the Act approved by the President on October 6th, 1917 known as the "Trading with the Enemy Act", and the acts amendatory thereto and the Executive orders and actions proclaimed and done in alleged conformity therewith; also under the Con-

stitution of the United States of America and, more particularly, the Fourth and Fifth Amendments thereto; also under the provisions of the Treaty existing between the Confederation of Switzerland and the United States of America, concluded November 25th, 1850 and ratified on the 7th day of March, 1851, and particularly under Art. I thereof. This action is commenced within the period prescribed by the said Acts of Congress for the bringing of such actions.

Fifth. The complainant is not now, and never has been an enemy or ally of enemy as defined in said Acts of Congress, and it has never been proclaimed by the President as included within said terms, or either of them; no finding that it is an enemy or ally of enemy
3 has been made either by the President as aforesaid, or by the Alien Property Custodian, or by any other authority of the United States of America whatsoever. It is not and never has been resident within, or incorporated within, or done business within any part of the territory (including that occupied by the military and naval forces) of any nation with which the United States is or at any time since April 6, 1917, was at war. It is not and never has been resident within, or incorporated within, or done business within any part of the territory (including that occupied by the military and naval forces) of any nation which now is or at any time since April 6, 1917, was an ally of any nation with which the United States now is or at any time since said date was at war.

Sixth. Prior to November 2nd, 1912 a certain firm or copartnership called Heinr. Franck Söhne, having its principal office at Ludwigsburg, Germany, did business in the State of New York in the manufacture and sale of chicory. The said firm was well-known, had been in existence for over 75 years and had had relations with the United States for over 50 years. It had done business in the State of New York since 1895, and was composed of Carl and Walter Franck, of Linz, Austria, and Richard and Robert Franck, of Ludwigsburg, Germany, and Eugene Beitter, a resident of the State of New York who was then a German subject but since has become a citizen of the United States. On November 12, 1912, the business of the copartnership was incorporated under the laws of the State of New York, and a corporation formed under the name of Heinr. Franck Sons, Inc. The stock of this corporation was issued
4 to the former copartnership and to their nominees, of whom at least three were American citizens. The capitalization was $500,000; the corporation was the owner of all the stock, with the exception of 10 shares, of the New York corporation of Georg. Jos. Scheuer, Inc., which corporation was engaged in business similar to that of Heinr. Franck Sons Inc. In 1913 the latter corporation acquired all the stock of the Franck Chicory Co., a Michigan corporation which was engaged in similar business, excepting only 4 shares. Thereafter, and on or about October 3rd, 1913, the authorized capital of Heinr. Franck Sons, Inc. was increased from $500,000 to $700,000. and the stock representing such increase was issued to the foregoing persons. Thereupon, Eugene Beitter became the owner of 750 shares of the par value of $100. each, and the former partners and their nominees became the owners of the balance, i. e. 6,250 shares of the par value of $100. each.

Seventh. For many years prior to 1912 a business had been conducted in Europe similar to that of Heinr Franck Söhne, and known as Kathreiner's. A bitter trade rivalry grew up between the two firms and continued until 1912. In 1909 the said firm of Kathreiner's and Heinr Franck Söhne signed an instrument known as a Treaty of Peace. The terms of this were violated according to the Kathreiner group by the Franck interests, and the firm thereupon began a suit in equity against the latter in the courts of the then Empire of Germany; that suit was compromised by the making of a new agreement dated June 27th, 1912. That agreement failed to preserve the peace and a new agreement was made and entered
5 into on the 27th day of September, 1913, providing for the transfer to a Swiss corporation of the interests in their several enterprises wherever situated, of all the warring parties, at prices fixed by the agreement itself and to be paid in stock of the Swiss corporation. The corporation thus incorporated is the complainant; its date of incorporation is September 16, 1913; the place is Schaffhausen, a Canton of the Confederation of Switzerland. The capitalization was Five million Francs and of this amount one-quarter or Frs. 1,250,000 was, immediately after the incorporation, trusteed for the benefit of the interests theretofore hostile to the Francks, known as the Kathreiner group. The remaining three-quarters of the capital stock was apportioned to the Franck interests. The agreement of September 27, 1913, provided for the increase of the capital stock to Frs. 60,000,000 before the several enterprises belonging to the several groups had been transferred to your complainant, and valued by it, and said agreement likewise provided for a bond issue of Frs. 30,000,000. Thereafter, and in March 1915, the various enterprises having meanwhile been conveyed to your complainant, its capital stock was increased to Frs. 60,000,000—and distributed in the manner aforesaid, i. e. one-quarter to the Kathreiner interests and three-quarters to the Franck interests, and a bond issue of Frs. 30,000,000—was authorized and issued, a portion of which was used to purchase certain other enterprises necessary to the business of the complainant; another portion was sold in the bond market of Switzerland to any person who desired to buy same.

6 Eighth. Among the assets of the Franck group, which it was required according to the agreement of September 27th, 1913 to transfer to the complainant, was all the right, title and interest of that group in the New York corporation of Heinr. Franck Sons, Inc., aforesaid; and in accordance with their obligations said Franck interests transferred unto the complainant at some time before the 14th day of July, 1914 and as of July 1st, 1913 and at a valuation of Frs. 2,500,000—the 6,250 shares of the capital stock of the New York corporation which had been held by them since its incorporation on November 12, 1912. Said shares of stock were transferred on the books of Heinr. Franck Sons, Inc. as follows: 6,248 shares unto the name of your complainant; 2 shares unto the names of individuals to enable them to qualify as directors of the

American corporation. Since the said transfer of the 6,250 shares of stock, aforesaid, no person or corporation, other than your complainaint has had any interest in said stock whatsoever; the certificate has been in its possession or under its control at all times since it was issued, and is in its possession and under its control at the present time. The incorporation of your complainant was in strict compliance with the law of Switzerland; its corporate acts were each registered there, as required by law, and constitute public records at the present time; the incorporation was fully completed and all capital contributions arranged before the outbreak of the European war on July 29, 1914 and was made of course, without any knowledge of or reference to the political conditions which subsequently arose.

7 Ninth. On the 1st day of July 1918, the proportion of the total capital stock of your complainant, belonging to or standing in the name of Carl, Richard, Robert and Walter Franck or either of them, was 55.19%; the proportion of the total capital stock of your complainant, at that time belonging to and standing in the name of persons who were not enemies or allies of enemies, was 17.15%; at present the total capital stock of your complainant is owned by persons of the following nationalities: Swiss: 38.40%; Italian: 3.17%; English: 12.50%; Austrian: 14.64%; German: 26.26%; Dutch: 0.88%; Unknown: 4.14%. On the 1st day of July 1918, the bonds of the corporation were owned by persons of the following nationalities: Swiss, or neutrals and allies: 49-1/10%; Austrian: 21-1/10%; German: 25-4/10%; Persons unknown: 4-4/10%; and at present the situation is the following: Swiss, 59.50%; Austrian, 22%; German, 5%; Unknown, 12.73%.

Tenth. By demand dated the 1st day of July, 1918, a copy of which is hereunto annexed and marked Exhibit A, and addressed to Heinr. Franck Sons, Inc., Flushing, New York, the then Alien Property Custodian of the United States, A. Mitchell Palmer, did determine that Carl, Richard, Robert and Walter Franck were enemies not holding a license granted by the President, and had a certain right, title and interest in and to 6,249 shares of the stock of Heinr. Franck Sons, Inc.; 6,248 shares standing in the name of your complainant and one share in the name of T. Ellett Hodgskin, and said Alien Property Custodian did require the conveyance from said corporation to himself of every right, title and interest

8 of said enemies in said stock. By demand dated July 1st, 1918, a copy of which is hereunto annexed and marked Exhibit B, said A. Mitchell Palmer determined that Richard Franck, whose address is Ludwigsburg, was an enemy not holding a license granted by the President; that he had similar rights in one share of the said stock, and said Alien Property Custodian required that every right, title and interest of said enemy in said stock be conveyed to him. By supplementary demand, dated March 25, 1919, copy of which is hereunto annexed and marked Exhibit C, Francis P. Garvan who had meanwhile become Alien Property Custodian, determined that the shares aforesaid belonged to and were held for,

on account of, on behalf of or for the benefit of the persons mentioned in Column 4 thereof, i. e. Carl, Robert, Richard and Walter Franck, aforesaid; that these persons were enemies not holding a license granted by the President and he thereby seized such shares of stock and required that the same be transferred to him. By supplementary demand, dated April 28, 1919, said Francis P. Garvan made similar findings regarding the four Francks mentioned above, and determined that certain trade-marks and trade-mark registrations therein specified, and the good-will and business pertaining to said trade-marks, belonged to or were held for or on account of, or on behalf of, or for the benefit of said enemies comprising the firm of Heinr Franck Söhne, of Ludwigsburg, Germany, and seized the said trade-marks and the certificates of registration thereof, and the good-will and business thereunto pertaining and required them to be conveyed to him. Said stock, and the said trade-marks,
9 registrations, business and good-will were thereupon conveyed and delivered to the Alien Property Custodian as required by law, and was sold by him together with the patents and trade-marks held by the corporation unto one David McMorran. There were likewise seized by the*h* then Alien Property Custodian certain dividends due but unpaid upon said stock, or which thereafter were declared thereon. On information and belief, that the proceeds of the sale and the dividends collected on the stock aforesaid before the sale, amounted to upwards of $540,000 and are now in the hands of the defendant Frank White as Treasurer of the United States.

Eleventh. That thereafter and in pursuance of the terms of Section 9 of the Act known as "Trading with the Enemy" this complainant filed claims for the said amounts with the Alien Property Custodian, alleging that the said property belonged to it, a Swiss corporation, and not to the said Carl, Robert, Richard and Walter Franck. That after hearings had, the Alien Property Custodian submitted the claims without recommendation to the Attorney General of the United States; that the Attorney General rendered an opinion disallowing the said claims, and that on or about the 13th day of December, 1922, the President of the United States of America denied the said application for a refund of the said money.

Twelfth. At all the times hereinbefore mentioned, and from September 16, 1913 on which date it was incorporated, until the present time, your complainant has functioned and continues to function as a *bona fide* Swiss corporation. During the year 1919
10 financial conditions in Europe, and particularly the condition of the exchange between countries there, and between those countries and the United States of America, became progressively worse so that on December 31, 1919, your complainant was compelled to write off the amount of Swiss Frs. 56,232,098.75 from its total capitalization and surplus of Swiss Frs. 69,885,933.49, which said amount had been lost by it in operating its business. Subsequently, the corporation was compelled to write off further large sums by reason of which its capital was, and continues to be,

very seriously impaired. The remaining property of the corporation, including the amount received from the sale of its stock in Heinr. Franck Sons, Inc., the New York corporation, constitutes a fund, for the benefit of its creditors, of which there are a considerable number and amount, and for the benefit of the holders of the bonds aforementioned, in such manner that the stockholders of your complainant are not entitled to receive, and will not receive, any portion of the assets of this corporation, including the fund the subject of this action.

Thirteenth. Complainant charges that said taking over and seizure of its said property and assets, and the conveyance, transfer, assignment, delivery and payment thereof to the Alien Property Custodian, were illegal, wrongful and void in that the complainant was not an enemy or ally of enemy whose property or assets could be lawfully taken over or seized by, or conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian within the true meaning and intent of said terms in said Acts of Congress; on the contrary, the complainant in good faith had purchased within
11 the United States of America under and by virtue of the protection of the Treaty between the United States of America and Switzerland, aforesaid, and was engaged, as a neutral corporation, in holding the stock of Heinr. Franck Sons, Inc. the New York corporation, at the time of the said seizure; that the stock seized, as aforesaid, did not, at any time after the transfer thereof to your complainant, belong to, nor was same held for, on account of, on behalf of, or for the benefit of any enemy or ally of enemy of the United States of America.

Fourteenth. That no due and legal determination was ever made under the said "Trading with the Enemy" Act or otherwise that the said property and assets were enemy property and assets, and that no demand whatsoever of any kind, for said property and assets as required by law was ever made or served upon the complainant, nor upon the bondholders, or any person representing them, nor was any notice of the proposed action of the said Alien Property Custodian ever served upon any of these persons.

Wherefore, the complainant prays that a writ of subpœna issue herein directed to the said defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States of America, commanding them and each of them to appear herein and answer this bill of complaint, but not under oath, the answer under oath of each of them being hereby specifically waived, and that said defendants and each of them be directed (1) to deliver to complainant all of said property and assets seized,
12 taken over, conveyed, transferred, assigned, delivered or paid to the then Alien Property Custodian or the defendant Alien Property Custodian or the defendant Treasurer of the United States, as aforesaid, and now in the possession, custody or control of the above named defendants or either of them; (2) to pay over to the complainant the proceeds and avails of the sale or other disposition of any or all of said property and assets, together with all interest

or income accrued or realized thereon; and (3) to account to complainant for said property and assets, interest and income, and (4) that the complainant have such other and further relief as to the court may seem just and proper.

COMPAGNIE INTERNATIONALE DE
PRODUITS ALIMENTAIRES S. A.,
By FRITZ BON,
Director.

ELLIS, HARRISON, FERGUSON & ELLIS,
HENRY ESCHER,
Attorneys for Plaintiff.

CONFEDERATION OF SWITZERLAND,
Canton of Zurich,
City of Zurich, ss:

Consulate of the United States of America at the City of Zurich.

I, Fritz Bon being duly sworn says:

My address is Rueschlikon, Canton Zurich, Switzerland; I am a Director of Compagnie Internationale de Produits Alimentaires S. A., the complainant in the above entitled action; I have read the foregoing bill of complaint and know the contents thereof,
13 and the same is true to the best of my knowledge, information and belief.

The reason why this verification is not made by the complainant is that it is a corporation, and that deponent as a Director thereof is familiar with all the facts and circumstances set forth in the above bill of complaint.

The sources of deponent's information and the grounds of his belief are personal knowledge of the facts and examination of the corporation's records and other papers.

FRITZ BON.

Sworn to before me this 5th day of December, 1923.
[SEAL.]
CHARLES W. ALLEN,
Vice Consul of the United States of America, Zurich, Switzerland.

Service No. 5183.
Gratis.

14

EXHIBIT "A."

A. P. C. Form No. 106-A.

Original.

Report No. 24031. Trust No. W-21963-M.

Demand on Corporation for Stockholder's Interest Without Presentation of Certificates.

Alien Property Custodian.

Demand by Alien Property Custodian for Property.

Extracts from "Trading with the Enemy Act."

Sec. 7 (*e*). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (*e*). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act."

"Any payment, conveyance, transfer, assignment or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918.

Sec. 1 (*c*). "The words 'right,' 'title,' 'interest,' 'estate,' 'power,' and 'authority' of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or

would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy."

Sec. 2 (*a*). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

Sec. 2 (*c*). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the 'Trading with the enemy Act' and with any orders, rules, or regualtions heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian."

Sec. 3 (*d*). "The Alien Property Custodian may exercise any right, power, or authority of the enemy in, to, and over corporate stock, shares, or certificates representing beneficial interests owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, including (1) the right to receive all notices issued by the corporation, unincorporated association, company, or trustee which issued such stock, shares or certificates, to the holders or owners of similar stock, shares, or certificates, (2) the right to exercise all voting power appertaining to such stock, shares, or certificates, and (3) the right to receive all subscription rights, dividends, and other distributions and payments, whether of capital or income, declared or made on account of such stock, shares, or certificates, regardless of whether or not such stock, shares, or certificates be in the possession of the Alien Property Custodian and regardless of whether or not such stock, shares, or certificates have been transferred to the Alien Property Custodian upon the books of the corporation, association, company, or trustee issuing the same."

To Heinr. Franck Sons, Inc.,

Address: Flushing, New York:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and by said executive orders, after investigation do determine that: Carl, Robert, Richard and Walter Franck (name of enemy or ally of enemy) whose address

is Ludwigsburg (last known address) are enemies (not holding a license granted by the President), and has a certain right, title, and interest in and to 6249 shares of (not classified) stock standing on your books in the name of T. Ellet Hofgskin (#20 for 6249 shs. & #22 for one share) Cert. #20 n/o Internationale Nahrungs & Genussmettel, A. G. and Cert. 22 n/o.

I, as Alien Property Custodian, do hereby require that you shall convey, transfer, assign, and deliver to me as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law, every right, title, and interest of the said enemies in said stock, including in respect to the said stock the right which the said enemies may have, (*a*) to receive all notices issued by you to the holders or owners of similar stock, shares, or certificates; (*b*) to exercise all voting power appertaining to such stock, shares, or certificates; (*c*) to receive all subscription rights, dividends, and other distributions and payments, whether of capital or of income, declared or made on account of such stock, shares, or certificates.

I, as Alien Property Custodian, do hereby further require that you note the substance of this demand upon your stock books and/or stock ledger, and that you furnish a copy of this demand to the registrar and/or transfer agent, if any, of the stock in respect to which this demand is made.

I, as Alien Property Custodian, do hereby further require that within ten days from the service of this demand upon you, you report to me any and all acts which you have done, or omitted to do, pursuant to the requirements of this demand.

Until otherwise directed, you will remit to the Alien Property Custodian at Washington, by check payable to his order, all payments, whether of capital or income, now or hereafter declared or due on account of such stock, shares, or certificates, and you will direct such notices in respect to the said stock, shares, or certificates to the Alien Property Custodian.

This demand is supplementary to any demand which may hitherto have been made upon you, accompanied by the presentation of certificates which represent shares or beneficial interests, for the transfer into my name, as Alien Property Custodian, of such certificates, or for the transfer thereof into the name of any nominee of me as Alien Property Custodian, and this demand shall not prejudice or affect any demand accompanied by such certificates which has been, or which may hereafter be, made.

Witness my hand and seal of office, this First day of July, 1918.

A. MITCHELL PALMER,
Alien Property Custodian.

By J. L. DAVIS,
Managing Director.

(Signed)

You are hereby instructed to remit all accumulated dividends direct to this office upon receipt hereof. If checks for accumulated dividends have heretofore been drawn in favor of the enemy and are now held by you, you may send such checks direct to this office.

All future dividends shall be remitted to Empire Trust Company as Depositary for Alien Property Custodian. Trust No.W-21963-M, which has been duly designated as depositary of this trust.

You will also direct all notices hereby demanded, to said depositary and identify each notice by the trust number hereof.

15 Service of the within demand accepted this 17th day of July, 1918.

HEINR. FRANCK SONS, INC.,
By EUGENE BEITTER,
Secretary.

Served the within notice and demand on the within-named Heinr. Franck Sons, Inc. at Flushing *in the City of New York,* State of New York, this 17th day of July, 1918, by giving a true and correct copy thereof to Eugene Beitter, a secretary of the corporation of whom said demand is made, at the office of said corporation.

EMPIRE TRUST COMPANY,
(Signature Illegible.)

Served the within demand and notice on the corporation to which this demand is addressed, by transmitting a true and correct copy thereof to the said corporation at the address which appears on the face hereof, in a securely fastened official franked wrapper, registered at the post office at —— in the city of Washington, on the — day of ——, 191–.

—— ——.

16 EXHIBIT B.

A. P. C. Form No. 106-A.

Original.

Report No. 24031. Trust No. W-2326-M.

Demand on Corporation for Stockholder's Interest Without Presentation of Certificates.

Alien Property Custodian.

Demand by Alien Property Custodian for Property.

Extracts from "Trading with the Enemy Act."

Sec. 7 (*c*). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (*e*). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act."

"Any payment, conveyance, transfer, assignment or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918.

Sec. 1 (*c*). "The words 'right,' 'title,' 'interest,' 'estate,' 'power,' and 'authority' of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy."

Sec. 2 (*a*). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

Sec. 2 (*c*). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the 'Trading with the enemy Act' and with any orders, rules, or regualtions heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian."

Sec. 3 (*d*). "The Alien Property Custodian may exercise any right, power, or authority of the enemy in, to, and over corporate

stock, shares, or certificates representing beneficial interests owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, including (1) the right to receive all notices issued by the corporation, unincorporated association, company, or trustee which issued such stock, shares or certificates, to the holders or owners of similar stock, shares, or certificates, (2) the right to exercise all voting power appertaining to such stock, shares, or certificates, and (3) the right to receive all subscription rights, dividends, and other distributions and payments, whether of capital or income, declared or made on account of such stock, shares, or certificates, regardless of whether or not such stock, shares, or certificates be in the possession of the Alien Property Custodian and regardless of whether or not such stock, shares, or certificates have been transferred to the Alien Property Custodian upon the books of the corporation, association, company, or trustee issuing the same."

To Heinr. Franck Sons, Inc.,

Address: Flushing, New York:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and by said executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and by said executive orders, after investigation do determine that: Richard Franck (name of enemy or ally of enemy) whose address is Ludwigsburg, (last known address) is an enemy (not holding a license granted by the President), and has a certain right, title, and interest in and to one shares of (not classified) stock standing on your books in the name of Richard Franck.

I, as Alien Property Custodian, do hereby require that you shall convey, transfer, assign, and deliver to me as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law, every right, title, and interest of the said enemy in said stock, including in respect to the said stock the right which the said enemy may have, (*a*) to receive all notices issued by you to the holders or owners of similar stock, shares, or certificates; (*b*) to exercise all voting power appertaining to such stock, shares, or certificates; (*c*) to receive all subscription rights, dividends, and other distributions and payments, whether of capital or of income, declared or made on account of such stock, shares, or certificates.

I, as Alien Property Custodian, do hereby further require that you note the substance of this demand upon your stock books and/or stock ledger, and that you furnish a copy of this demand to the registrar and/or transfer agent, if any, of the stock in respect to which this demand is made.

I, as Alien Property Custodian, do hereby further require that within ten days from the service of this demand upon you, you

report to me any and all acts which you have done, or omitted to do, pursuant to the requirements of this demand.

Until otherwise directed, you will remit to the Alien Property Custodian at Washington, by check payable to his order, all payments, whether of capital or income, now or hereafter declared or due on account of such stock, shares, or certificates, and you will direct such notices in respect to the said stock, shares, or certificates to the Alien Property Custodian.

This demand is supplementary to any demand which may hitherto have been made upon you, accompanied by the presentation of certificates which represent shares or beneficial interests, for the transfer into my name, as Alien Property Custodian, of such certificates, or for the transfer thereof into the name of any nominee of me as Alien Property Custodian, and this demand shall not prejudice or affect any demand accompanied by such certificates which has been, or which may hereafter be, made.

You are hereby instructed to remit all accumulated dividends direct to this office upon receipt thereof. If checks for accumulated dividends have heretofore been drawn in favor of the enemy and are now held by you, you may send such checks direct to this office. All future dividends shall be remitted to Empire Trust Company as Depositary for Alien Property Custodian. Tsust No. W-2326-M, which has been duly designated as depositary of this trust.

You will also direct all notices hereby demanded, to said depositary and identify each notice by the trust number hereof.

Witness my hand and seal of office this First day of July, 1918.

A. MITCHELL PALMER,
Alien Property Custodian,

(Signed) By J. L. DAVIS.
Managing Director.

17 Service of the within demand accepted this 17th day of July, 1918.

HEINR. FRANCK SONS, INC.,
By EUGENE BEITTER,
Secretary.

Served the within notice and demand on the within-named Heinr. Franck Sons, Inc. at Flushing *in the City of New York,* State of New York, this 17th day of July, 1918, by giving a true and correct copy thereof to Eugene Beitter, a secretary of the corporation of whom said demand is made, at the office of said corporation.

EMPIRE TRUST COMPANY,
(Signature Illegible.)

Served the within demand and notice on the corporation to which this demand is addressed, by transmitting a true and correct copy thereof to the said corporation at the address which appears on the face hereof, in a securely fastened official franked wrapper, registered at the post office at —— in the city of Washington, on the — day of ——, 191–. —— ——.

18

EXHIBIT C.

Trust No. 2326, 21963. Report No. 24031.

Demand by Alien Property Custodian.

To Heinr. Franck Sons, Inc.,
Address: Flushing, New York:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading With the Enemy Act," approved October 6, 1917, and the amendments thereto, and the proclamations and executive orders issued in pursuance thereof, by virtue of the authority vested in me by said Act, said proclamations and executive orders, after investigation do determine that those certain shares of your capital stock heretofore registered and standing upon your books in the name of the person or persons listed in Column No. 1 of the schedule marked "Exhibit A" attached hereto and made a part hereof (said schedule being identified by the signature (Signed) F. C. Duvall on the margin thereof), and evidenced or represented by a certificate or certificates numbered as specified in Column No. 2 of said schedule on the same line with the name of the person in whose name said stock is registered or stands,, of the number and class of shares listed in Column No. 3 of said schedule on the same line as aforesaid, belong to and are by you held for, on account of, on behalf of, or for the benefit of the person or persons listed on the same line therewith in Column No. 4 of said schedule.

I do further, after investigation, determine that said persons whose names are listed in said Column No. 4 and whose addresses are given in Column No. 5 on the same line therewith, are enemies and each not holding a license granted by the President*
of them is an enemy / within the purview of said Act as amended and said proclamations and executive orders issued in pursuance thereof.

As such Alien Property Custodian, by virtue of the authority vested in me, I do hereby seize such shares of stock and each and all of them, and do require that the same be by you transferred, assigned, and delivered to me; and you are required to cancel forthwith upon your books and records all of the said shares of stock listed in said schedule and in lieu thereof to issue new certificates respectively in the name of the person or persons as specified in Column No. 6 of said schedule.

This demand is supplementary to any demands which may have been heretofore made upon you with respect to said shares or certificates and shall not prejudice or affect any such demands or any rights acquired by virtue thereof.

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*Interlineation made before signing. F. C. D.

Witness my hand and seal of office, this 25th day of March, 1919.
(Signed) FRANCIS P. GARVAN,
[SEAL.] *Alien Property Custodian.*

Approved for execution.
SPIER WHITAKER,
Bureau of Law.
3/26/19.

19 Service of the within demand accepted this Eleventh day of April, 1919.

HEINR. FRANCK SONS, INC.,
By E. HICKS HERRICK,
Secretary.

Pursuant to the mandate of the within demand, the said shares of stock have been canceled by indorsement as follows: "The shares of stock represented by this certificate (on record ledger ——) having been seized by the Alien Property Custodian by demand dated the 25th day of March, 1919, the same are hereby canceled pursuant to the mandate of said demand and new certificates numbered 23 & 24 have been this day issued in lieu thereof." April 11, 1919.

HEINR. FRANCK SONS, INC.,
(Signed) By E. HICKS HERRICK, *Secy.*

EXHIBIT A.

Attached to Demand Issued by the Alien Property Custodian, Dated the Twenty-fifth Day of March, 1919, and Identified by the Following Signature: (Signed) F. G. Duvall.

1.	2.	3. Number and kind of shares.			4.	5.	6.
Name of person in whose name shares of stock or other beneficial interests stand or stood.	Certificate No.	Common.	1st preferred.	2nd preferred.	Name of enemy for, on account of, or on behalf of whom shares of stock or other beneficial interests are or were held.	Address.	Name to whom new certificate to be issued.
Internationale Nahrungs und Genussmittel Aktiengesellschaft	20	6,248	....	....	Carl, Robert, Richard, and Walter Franck	Ludwigsburg, Germany	Francis P. Garvan, as Alien Property Custodian, Trust No. 21963.
Richard Franck	21	1	....	....	Richard Franck	Ludwigsburg, Germany	Francis P. Garvan, as Alien Property Custodian, Trust No. 2326.
T. Ellett Hodgskin	22	1	....	....	Carl, Robert, Richard, and Walter Franck	Ludwigsburg, Germany	Francis P. Garvan, as Alien Property Custodian, Trust No. 21963.

The above certificates to be delivered to The Empire Trust Company, New York, N. Y., as depositary for the Alien Property Custodian.

21 EXHIBIT "D."

Trust No. 21963. Report No. 40007.

To Heinrich Franck Sons., Inc.,
Flushing, L. I.:

To T. Ellet Hodgskin,
20 Nassau St., New York City:

To the Commissioner of Patents,
Washington, D. C.:

To all to whom these presents may come:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, under and by virtue of the authority vested in me as Alien Property Custodian, after investigation, do determine that Richard Franck, Robert Franck, Carl Franck and Walter Franck, comprising the firm of Heinrich Franck Soehne of Ludwigsburg, Germany, is an enemy not holding a license granted by the President within the purview of said Act as amended and said orders and proclamations; and I do further, after investigation, determine that certain trade-marks and trade-mark registrations, identified as follows:

Registration No.	Date.	Trade-mark.
23,623	Sept. 19, 1893.....	Representation of coffee grinder, coffee pot and an animal.
23,624	Sept. 19, 1893.....	Representation of coffee grinder and signature Heinrich Franck Soehne.
83,863	Oct. 17, 1911.....	Representation of a coffee grinder.

and the following trade-marks:

22 Trampler.
Rosen.
Representation of an Ethiopian.
Representation of a rose forming the base for a lozenge shaped device.
Rosen-Kaffee.
Scheuer.
Representation of St. George killing the dragon.
Facsimile signature Heinrich Franck Soehne.
The letter S enclosed in horseshoe.

and the good will and business pertaining to said trade-marks, and the certificates of registration of said trade-marks, and every right, title and interest with respect to said trade-marks, including all damages and profits recoverable at law or in equity, from any person, firm, corporation or government for past infringement thereof, subject to the rights, if any, of Heinrich Franck Sons, Incorporated, belong to, or are held for, or on account of, or on behalf of, or for the benefit of said enemy, Richard Franck, Robert Franck, Carl Franck and Walter Franck, comprising the firm of Heinrich Franck Soehne of Ludwigsburg, Germany.

As such Alien Property Custodian, I do seize said trade-marks and the certificates of registration thereof, and the good will and business thereunto pertaining, and every right, title and interest with respect to said trade-marks, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights, if any, of Heinrich Franck Sons, Incorporated, and I hereby require that you convey, transfer, assign and deliver the same to me, to be by me, as Alien Property Custodian, held, administered and accounted for as provided by law.

23 I, as Alien Property Custodian, do request that the Commissioner of Patents record this requirement upon the books and records kept by him, to show the assignment and transfer of trade-marks, in respect to the trade-marks above listed.

This demand is supplementary to any and all requirements and demands heretofore made with respect to said property and is in addition to and without prejudice to such requirements and demands, and shall in no way affect the interests, rights and powers acquired by me as Alien Property Custodian by virtue of such previous requirements and demands.

Witness my hand and seal of office this 28th day of April, 1919.

FRANCIS P. GARVAN,
Alien Property Custodian.

Service of the foregoing demand is hereby acknowledged, this — day of ——, 1919.

—— ——.

24 *Motion to Dismiss.*

Filed January 22, 1924.

* * * * * * *

Now comes the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, by their attorney, Peyton Gordon, Esq., Attorney of the United States in and for the District of Columbia, separately and severally moving to dismiss the bill of complaint, and for grounds for their said motion assign the following:

(1) It appears affirmatively from the allegations of the bill of complaint that the plaintiff herein was, at the time the money and

other property involved in this suit was required to be conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian, a corporation incorporated within a country other than the United States, and was not at such time entirely owned by subjects or citizens of nations, states or free cities other than Germany or Austria or Hungary or Austria-Hungary.

(2) It appears affirmatively from the allegations of the bill of complaint that the plaintiff herein was at the time the money and other property involved in this suit was required to be conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian, a corporation organized within a country other than Germany, Austria or Hungary, and that the control of or more than fifty percentum of the interest, or voting power in such corporation, was not at such time vested in citizens of subjects of nations, states or free cities other than Germany or Austria or Hungary or
25 Austria-Hungary.

(3) The plaintiff has not stated facts sufficient to entitle it to equitable relief under Section 9 of the Trading with the Enemy Act as amended.

PEYTON GORDON,
Attorney of the United States in and for the District of Columbia, Attorney for Miller, as Alien Property Custodian, and White, as Treasurer of the United States.

Order.

Filed March 14, 1924.

* * * * * * *

Upon consideration of the motion to dismiss the bill of complaint in the above-entitled cause, and after hearing the arguments of counsel, and the plaintiff having elected to stand upon its bill of complaint, it is, by the Court, this 14th day of March, 1924,

Adjudged, ordered, and decreed that the motion to dismiss be, and the same hereby is, sustained;

And it is further ajudged, ordered and decreed that the Bill of Complaint be, and the same hereby is, dismissed;

And it is further adjudged, ordered, and decreed that the defendants recover their costs in this behalf expended, and that they have execution therefor as at law.

By the Court:

WENDELL P. STAFFORD,
Justice.

26 From the foregoing decree the plaintiff notes an appeal in open court to the court of appeals of the District of Columbia, and the penalty of bond for costs is fixed at $100 or cash deposit of fifty dollars.

WENDELL P. STAFFORD,
Justice.

Memorandum.

March 24, 1924.—$50.00 deposited in lieu of appeal bond.

Assignments of Error.

Filed March 24, 1924.

* * * * * * *

The court in the above entitled case having dismissed the Bill of Complaint and the plaintiff in open court having given notice of an appeal to the Court of Appeals of the District of Columbia, the plaintiff assigns as errors committed by the trial court the following:

First. The court erred in granting the motion of the defendants to dismiss the Bill of Complaint of plaintiff;

Second. The court erred in rendering and entering judgment, order and decree dismissing the Bill of Complaint of plaintiff;

Third. The court erred in not holding that the plaintiff had a right under Section 9 of the Act of Congress approved
27 October 6th, 1917, known as the "Trading with the Enemy Act" and paragraph "A" of Section 9 of said Act as amended, to the return of the property of the plaintiff, because plaintiff was and is a "person" defined by said Act and amendments as including a corporation, and was not and is not an enemy or ally of enemy as defined in said Act and amendments, and was the owner of said property so taken over by the Alien Property Custodian, all as shown by said Bill of Complaint;

Fourth. The court erred in not holding that the plaintiff had a right under the allegations of said Bill of Complaint and said Section 9 and said paragraph "A" of Section 9 of said Act as amended, to the return of its property because the said property so taken over by the Alien Property Custodian was not so taken over as the property of the plaintiff, but as the property of others, and the plaintiff was not declared by the President or by the Alien Property Custodian to be an enemy or ally of enemy;

Fifth. The court erred in not holding that under the Constitution of the United States the Alien Property Custodian could not hold and retain the property of plaintiff, a neutral corporation not declared an enemy or ally of enemy.

Sixth. The court erred in not holding that the allegations in the Bill of Complaint gave the plaintiff a right to the return of its property under paragraph "A" of Section 9 of said Trading with the Enemy Act, and under said Act as a whole;

Seventh. The court erred in other respects apparent of record.

The court for these reasons erred in entering judgment, order and decree granting motion to dismiss the Bill of Complaint,
28 and dismissing said bill.

CHALLEN B. ELLIS,
Attorney for Plaintiff.

Service of the Assignments of Error, and the Designation of the Transcript of Record, acknowledged this 22nd day of March, 1924.

DEAN HILL STANLEY,
Special Assistant to the Attorney General.

Designation of Record.

Filed March 24, 1924.

* * * * * * *

To the Clerk of the Supreme Court of the District of Columbia:

You will please prepare the following as a transcript of record on appeal to the Court of Appeals in the above entitled case:

1. The following papers in full:

(a) The Bill of Complaint.
(b) The Motion to Dismiss.
(c) Order of the Court dismissing the Bill of Complaint.
(d) Appeal in open Court from the said decree.
(e) The Assignments of Error.
(f) This designation of the Record.

2. Memorandum of the following:

(g) Cash deposit of $50.00 in lieu of bond.

CHALLEN B. ELLIS,
Attorney for Plaintiff.

Approved:

DEAN HILL STANLEY,
Special Assistant to the Attorney General.

29 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 28, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed copy of which is made part of this transcript, in cause No. 42058 in Equity, wherein Compagnie Internationale De Produits Alimentaires S. A. is Complainant and Thomas W. Miller as Alien Property Custodian of the United States of America and Frank White as Treasurer of the United States of America are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, in said District, this 9th day of May, 1924.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

EW.

Endorsed on cover: District of Columbia Supreme Court. No. 4164. Compagnie Internationale D. Produits Alimentaires S. A., appellant, vs. Thomas W. Miller, &c., et al. Court of Appeals, District of Columbia. Filed May 14, 1924. Henry W. Hodges, clerk.

In Court of Appeals of the District of Columbia

Compagnie Internationale de Produits Alimentaires, S. A., Appellant,

vs.

Thomas W. Miller, as Alien Property Custodian of the United States of America, and Frank White, as Treasurer of the United States of America, Appellees.

Motion to Affirm Judgment—Filed May 21, 1924

Now come the appellees in the above entitled cause and move the Court for judgment forthwith affirming the judgment below on the authority of No. 4014 Behn Meyer & Co. Ltd. v. Miller et al.

Dean Hill Stanley, Assistant Attorney-General, Attorney for Appellees.

In Court of Appeals

[Title omitted]

Judgment—Filed May 23, 1924

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and on a motion to affirm which was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decree by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs on authority of Behn Meyer & Co., Ltd. vs. Miller, et al.

Per Mr. Justice Robb, May 23, 1924.

In Court of Appeals of District of Columbia

[Title omitted]

Petition for Appeal—Filed May 23, 1924

Now comes the petitioner, Compagnie Internationale de Produits Alimentaires, S. A., a corporation, appellant in the above-entitled cause, by its counsel, and shows to the court that on May 23, 1924, a decision was rendered and decree entered against it herein, in which decision and decree, to its damage and prejudice, certain errors were committed, as will appear from the assignment of errors filed herewith.

Your petitioner further shows that the decree of the Court of Appeals herein is subject to review by the Supreme Court under the provisions of paragraphs five and six of Section 250 of the Judicial Code, in that the validity of an authority exercised under the United States and the existence and scope of a power or duty of an officer of the United States are drawn in question and the construction of a law of the United States is drawn in question, and that there are involved questions, among others similar to those in No. 4014, Behn-Meyer & Company, Limited vs. Miller, et al., recently decided by this court, in which an appeal was allowed by this court to the Supreme Court of the United States.

Wherefore, Your petitioner prays the allowance of an appeal to the Supreme Court of the United States for the correction of the errors complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court, and that a bond to act as a supersedeas be fixed at the sum of $300.00.

Compagnie Internationale de Produits Alimentaires, S. A., Appellant, by Challen B. Ellis, Its Attorney.

IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS

And now comes Compagnie Internationale de Produits Alimentaires, S. A., the appellant herein, and says that in the record and proceedings of the Court of Appeals in the above-entitled cause and is the rendition of the final decree therein manifest error has intervened, to the prejudice of said appellant in this, to-wit:

1. The court erred in affirming the judgment and decree of the Supreme Court of the District of Columbia, granting the motion of the defendant below to dismiss the bill of complaint, and dismissing the bill.

2. The court erred in not holding that the appellant, the plaintiff below, had a right under Section 9 of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act" and paragraph "A" of Section 9 of said Act as amended, to the return of the property of the appellant, plaintiff below, because appellant, plaintiff below, was and is a "person" defined by said Act and amendments as including a corporation, and was not and is not an enemy or ally of enemy as defined in said Act and amendments, and was the owner of said property so taken over by the Alien Property Custodian, all as shown by said bill of complaint;

3. The court erred in not holding that the appellant, plaintiff below, had a right under the allegations of said bill of complaint and

said Section 9 and said paragraph "A" of Section 9 of said Act as amended, to the return of its property because the said property so taken over by the Alien Property Custodian was not so taken over as the property of the appellant, plaintiff below, but as the property of others, and the appellant, plaintiff below, was not declared by the President or by the Alien Property Custodian to be an enemy or ally of enemy;

4. The court erred in not holding that under the Constitution of the United States the Alien Property Custodian could not hold and retain the property of appellant, plaintiff below, a neutral corporation not declared an enemy or ally of enemy.

5. The court erred in not holding that the allegations in the bill of complaint gave the appellant, plaintiff below, a right to the return of its property under paragraph "A" of Section 9 of said Trading with the Enemy Act, and under said Act as a whole;

6. The court erred in other respects apparent of record.

Compagnie Internationale de Produits Alimentaires, S. A., Appellant, by Challen B. Ellis, Its Attorney.

Service acknowledged, this 23rd day of May, 1924.
Dean Hill Stanley, Attorneys for Appellees.

IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD

The clerk will please prepare a transcript of record on appeal to the Supreme Court of the United States in the above-entitled cause and include therein the following:

1. The printed record in the Court of Appeals.
2. Motion to affirm.
3. The decree.
4. Petition for allowance of appeal and assignment of errors.
5. Order allowing appeal.
6. Bond.
7. Citation.
8. Designation.

Compagnie Internationale de Produits Alimentaires, S. A., Appellant, by Challen B. Ellis, Its Attorney.

Service acknowledged, this 23rd day of May, 1924.
Dean Hill Stanley, Attorney for Appellees.

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 24, 1924

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is ordered that said appeal be, and the same is hereby, allowed, and the bond to act as supersedeas is fixed at the sum of three hundred dollars.

SUPERSEDEAS BOND ON APPEAL FOR $300—Approved and filed May 26, 1924; omitted in printing

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CITATION—In usual form, showing service on Dean Hill Stanley; omitted in printing

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 37, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Compagnie Internationale de Produits Alimentaires S. A., Appellant, vs. Thomas W. Miller as Alien Property Custodian of the United States of America and Frank White as Treasurer of the United States of America, No. 4164, April Term, 1924, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this twenty-seventh day of May, A. D. 1924.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

Endorsed on cover: File No. 30,371. District of Columbia Court of Appeals. Term No. 412. Compagnie Internationale de Produits Alimentaires S. A., appellant, vs. Thomas W. Miller, as Alien Property Custodian of the United States of America, and Frank White, as Treasurer of the United States of America. Filed May 27th, 1924. File No. 30,371.